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San Diego Law Review

Volume 1
Issue 1 *1964*

Article 14

1-1-1964

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Recommended Citation

James W. Brannigan Jr., *Collateral Estoppel - Corporation Collaterally Estopped from Relitigating Issue Adjudicated in Prior Criminal Conviction of its President (Teitelbaum Furs, Inc. v. Dominion Ins. Co., Cal. 1962)*, 1 SAN DIEGO L. REV. 126 (1964).
Available at: https://digital.sandiego.edu/sdlr/vol1/iss1/14

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COLLATERAL ESTOPPEL — CORPORATION COLLATERALLY ESTOPPED FROM RELITIGATING ISSUE ADJUDICATED IN PRIOR CRIMINAL CONVICTION OF ITS PRESIDENT. *Teitelbaum Furs, Inc. v. Dominion Ins. Co.* (Cal. 1962).

In a criminal action Teitelbaum was convicted of conspiracy to commit grand theft, attempted grand theft, and the presentation and filing of false insurance claims as a result of a fake robbery of a corporation of which he was president and controlling stockholder.[1] The corporation brought a subsequent action to recover on insurance policies for losses allegedly sustained in the same robbery. At the trial it was conceded that the corporation was Teitelbaum's *alter ego. Held*: The prior criminal conviction of Teitelbaum for attempt to defraud the insurer operated as a bar to the corporation's action under the policies. *Teitelbaum, Furs Inc. v. Dominion Ins. Co.*, 25 Cal. Rptr. 559, 375 P. 2d 439 (1962).

A prior adjudication may be used in subsequent litigation in two ways. First, it precludes the parties and their privies to an action from relitigating the *same cause of action* once it has been reduced to judgment or decree of a court of competent jurisdiction. This is the true doctrine of *res judicata.*[2] Second, it may have determined specific issues which are binding on the parties and their privies in subsequent actions involving different causes of action. This is collateral estoppel. If there has been no intervening change of law, any issue directly adjudicated and necessarily involved in a judgment on the merits is conclusively settled by that judgment. The issue cannot again be litigated between the parties or their privies in a subsequent action, whether or not the subject matter of the two suits is the same.[3] It is uniformly held that the determination is conclusive when the parties in both suits are the same.[4] Where only one party in the second action is the same as in the first, a majority of courts hold the determination conclusive if the parties are in a derivative liability relationship. The relationships so recognized are indemnitor-indemnitee, master-servant, and principal-agent. The majority view requires a mutuality of estoppel between the parties to the second action.[5] A few jurisdictions hold the determination conclusive if the one *against* whom the plea is asserted was a party to the prior atcion.[6] California follows this view.[7]

1 People v. Teitelbaum, *aff'd*, 163 Cal. App. 2d 184, 329 P. 2d 157 (1958), *cert. denied*, 359 U.S. 206 (1959).
2 Annot., 23 A.L.R. 2d 710, 713 (1952).
3 50 C.J.S. *Judgments* § 593 (1947).
4 *Id.* at 11.
5 Annot., 23 A.L.R. 2d 710, 739 (1952).
6 *Id.* at 738.
7 Bernhard v. Bank of America, 19 Cal. 2d 807, 122 P. 2d 892 (1942).

The California test asks three questions: (a) Was the issue decided in the prior adjudication identical with that presented in the action in question? (b) Was there a final judgment on the merits? (c) Was the party against whom the plea is asserted a party, or in privity with a party, to the prior adjudication? If these three questions are answered affirmatively, collateral estoppel will apply.[8]

The questions taken as a test of collateral estoppel in California are broad enough to include all four variations of the party relationships in the two actions. These situations are summarized thusly:[9]

ONE:

Case I: A sues B. Issue is decided for B.

Case II: A sues C. C attempts to use the issue from *Case I* defensively.

TWO:

Case I: A sues B. Issue is decided for A.

Case II: B sues C. C attempts to use the issue from *Case I* defensively.

THREE:

Case I: A sues B. Issue is decided for B.

Case II: C sues A. C attempts to use the issue from *Case I* offensively.

FOUR:

Case I: A sues B. Issue is decided for A.

Case II: C sues B. C attempts to use the issue from *Case I* offensively.

The specific applicability of collateral estoppel to each of these situations can be limited by a case-by-case determination.[10]

At the time of *Teitelbaum,* California decisions involving pleas of collateral estoppel had been rendered on cases with party relationships categorized as situations ONE, THREE and FOUR. The application of collateral estoppel in situation ONE[11] and in a case similar to situation THREE[12] was held valid; but, in situation FOUR it was held invalid.[13]

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8 *Id.* 122 P. 2d at 895.

9 CURRIE, *Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine,* 9 STAN. L. REV. 281 (1957).

10 CURRIE, *Justice Traynor and the Conflict of Laws,* 13 STAN. L. REV. 719, 762 (1961).

11 Bernnard v. Bank of America, 19 Cal. 2d 807, 122 P. 2d 892.

12 Hardware Mutual Ins. Co. v. Valentine, 119 Cal. App. 2d 125, 259 P. 2d 70 (1953).

13 Nevarov v. Caldwell, 161 Cal. App. 2d 762, 327 P. 2d 111 (1958).

Teitelbaum involves situation TWO. In the criminal case *Case I,* the state was the plaintiff and Teitelbaum was the defendant. In the civil action *Case II,* the corporation, Teitelbaum's alter ego, was the plaintiff and the insurance company was the defendant. The defendant in *Case II* used the fact of the robbery, determined adversely to Teitelbaum in *Case I,* as a *defense* to the action in *Case II.* It is important to keep in mind that *Case I* was a criminal action and *Case II* was a civil action.

The court held that the three-question test was satisfied and ruled that the criminal conviction conclusively determined the fact that there was no robbery. Because of this the trial court's refusal to grant a judgment notwithstanding the verdict was reversible error. The case was remanded with directions to enter judgment for the defendant.

The words *final judgment on the merits* in the collateral estoppel test were clearly defined. The issue must not only have been specifically litigated and necessarily determined, but must have been litigated under circumstances assuring full opportunity to be heard on that issue. The court found that the safeguards present in a criminal action, coupled with the threat of imprisonment, gave Teitelbaum both opportunity and incentive to make as effective a defense as possible. This alleviated any problem of determining whether the one against whom the plea was asserted should have foreseen the effect of determinations in the prior action on subsequent litigation, and therefore made a sufficient defense.

In support of its decision, the court in *Teitelbaum* cites *Eagle Ins. Co. v. Heller* (Va.),[14] *Mineo v. Burke Ins. Co.* (Penn.),[15] and *Austin v. U.S.* (7th Cir.).[16] These cases are significant in determining the underlying reason for the result reached in *Teitelbaum.* Virginia and Pennsylvania follow the majority view requiring mutuality. Nevertheless, in factual situations paralleling *Teitelbaum,* both states and the Federal decision have held the prior criminal conviction could be used as a determination of fact in a civil case. These three holdings were not decided by dispensing with the requirement of mutuality of collateral estoppel but rather as a matter of public policy.

The apparent effect of the *Teitelbaum* decision is to overrule California precedent,[17] and to place California among the *growing*

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14 149 Va. 82, 140 S.E. 314 (1927).
15 182 Pa. Super. 75, 125 A. 2d 612 (1956).
16 125 F. 2d 816 (7th Cir. 1942).
17 29 CAL. JUR. 2D *Judgments* § 228 (1956).

minority in the use of a criminal conviction in a civil action.[18] It is beyond the scope of this note to discuss all the various ways prior criminal convictions may be used in subsequent civil suits. It is interesting to note, however, that the California legislature has already acted to limit the use of prior criminal actions in the area of motor vehicle convictions.[19]

The question thus becomes: Will California follow a *Teitelbaum* factual situation where *Case I* was a civil and not a criminal action?

Successive actions arising from an automobile collision occurring in California serve as an example. *A,* a passenger in *Car I,* brings an action in a California court for personal injuries against B, the owner-driver of *Car 2. A* recovers because *B* is found negligent. *B* then brings an action, also in a California court, for personal injury and property damage against *C,* the owner-driver of *Car 1. C* sets up the defense of contributory negligence, establishd by the *A-B* action, and moves for a judgment against *B.* Should the motion be granted?

At this point it is important to recall some of the differences in California between criminal and civil actions. The criminal action is procedurally controlled in favor of the defendant. He has a right to be represented by counsel.[20] Proof must be beyond reasonable doubt.[21] The verdict must be unanimous.[22] Tactical use of the initiative in a civil action may greatly limit the defense available, while such is not the case in a criminal action.

In view of the procedural differences, it cannot be said that a defendant in a civil action has had a full and unfettered opportunity to litigate all issues necessarily decided therein. For this reason it is believed that California should not extend collateral estoppel to situation TWO which involves successive civil suits.

Although the court in *Teitelbaum* decides the case ostensibly on the basis of collateral estoppel, the underlying reason appears to be public policy. It has always been a fundamental principle to preclude a convicted criminal from enforcing rights arising from his crime.

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18 McCORMICK, EVIDENCE, 619 (1954).

19 CAL. VEH. CODE § 40834 (enacted July 13, 1963, effective Sept. 20, 1963) provides that a conviction under the Vehicle Code, or local ordinance pertaining to motor vehicle operation, cannot be used as collateral estoppel in a civil action. See Walther v. News Syn. Co., 276 App. Div. 169, 93 N.Y.S. 2d 537 (1949), as to the general feeling that such convictions are unreliable as to establishing facts upon which they were based.

20 CAL. CONST. ART. 1, § 13.

21 CAL. CODE OF CIV. PROC. § 2061; PEN. CODE § 1102.

22 CAL. PEN. CODE § 1164.

With a broad test for collateral estoppel, the court was able to satisfy the demands of public policy without resort to the words. Such a public policy question would not be presented were *Case I* a civil action.

The *Teitelbaum* decision, therefore, should be limited to its facts. California used the broad wording of the collateral estoppel test to encompass a factual situation where public policy dictated the outcome. In so doing, the court may have further muddied the not too clear waters of collateral estoppel.

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ETHICS — MEMBERS OF NEW YORK LAW FIRM FOUND GUILTY OF PROFESSIONAL MISCONDUCT AS A RESULT OF THEIR ROLE IN THE PUBLISHING OF A SELF-LAUDATORY ARTICLE IN LIFE MAGAZINE. *In re Connelly* (N.Y. 1963).

Four members of a New York law firm were censured by the New York Supreme Court for professional misconduct due to violation of Canon 27 of Professional Ethics, New York State Bar Association. The court held that they knowingly and deliberately contributed to an article appearing in LIFE Magazine advertising their law firm. *In Re Connelly,* 240 App. Div. 466, 240 N.Y.S. 2d 126 (1963).

The offending article,[1] written in a flamboyant and exaggerated style, gave a boost to this firm in an attempt to give the public a "bird's eye view" of how a typical corporate law firm operates. The firm's attorneys did little to discourage LIFE's praise.

LIFE bounced back from the court's holding with a critical editorial lampooning the decision.[2] LIFE stated that ". . . the judges were wrong."; that Canon 27 ". . . curtains off the public right to know what goes on in an important area of American society";[3] that it was important for the public to know that laywers spend most of their time keeping people out of court; and, that it was valuable for the public to see what makes a law firm tick.

The American Bar Journal[4] gives a brief summary of this interesting case. It evaluates the court decision, criticizes LIFE's editorial, and proceeds to rationalize the court's conclusions.

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1 EDY, *Behind the Scenes Tour of Today's Legal Labyrinths: Lawyers who Try Not to Try Cases,* LIFE, Mar.9, 1962, p. 80.
2 *The Lawyer's Unneeded Veil,* LIFE, May 31, 1963, p. 4.
3 *Ibid.*
4 49 A.B.A.J., 786 (Aug. 1963).